

Opinion
259 B
NEW HAMPSHIRE LAW LIBRARY

SEP 22 1998

CONCORD, N.H.

May 23, 1956

*See also:
opinion of Mr. Wy
to Governor Bean
6/8/56 filed
416*

Honorable Walker Wiggin, President
of Constitutional Convention, and

Honorable Arthur E. Bean, Comptroller

Dear Sirs:

You have requested the opinion of this office relative to three questions concerning the Constitutional Convention. The questions are as follows:

1. In view of section 8 of chapter 42, Laws of 1955, at what rate should the delegates to the Constitutional Convention be paid for mileage expenses?

Section 8 of chapter 42, Laws of 1955, an act providing for a Constitutional Convention, states:

"Each delegate shall receive three dollars a day for his attendance on the convention and the same allowance for mileage as is now provided for members of the general court."

The effective date of this act was March 16, 1955.

The rate of pay of mileage for members of the General Court is found in section 15, chapter 14 of Revised Statutes Annotated, as amended by section 1 of chapter 228, Laws of 1955. While the amendment was approved June 30, 1955, the effective date of the act as contained in section 3 thereof was January 5, 1955. The intention of the Legislature, therefore was to increase the mileage rate for the entire 1955 session.

It is the opinion of this office that the mileage rate "as is now provided," was the rate established by chapter 228, Laws of 1955, and made retroactive by said act. If the legislature had not desired to increase the delegates' mileage to conform with the General Court's mileage, a statement to that effect in chapter 228 would have been included.

2. If the Constitutional Convention is in session long enough for the cost to exceed the appropriation provided, may the Governor and Council use the emergency fund to permit the Convention to finish its work?

Part 2, Article 99 of the Constitution of New Hampshire directs that the "sense of the qualified voters present as to the necessity of a revision" of the Constitution be taken and if the opinion of the majority of the voters is that there is a necessity for the consideration of such revisions, "it shall be the duty of the General Court to call a Convention for that purpose."

By chapter 42 of the Laws of 1955 the General Court provided for the election of delegates to the Constitutional Convention and appropriated the sum of \$75,000 for paying the expenses of the said Convention. It now appears that the Convention will be unable to terminate its deliberations before exhausting the appropriation. It is contemplated that the Convention will request the Governor and Council for additional funds from the Emergency Fund.

The Emergency Fund is established under the provisions of RSA 4:18. This statute provides that the fund may be used by the Governor, with the consent of the Council, "to aid any state department in any emergency which may arise in carrying out the essential functions of state government and in protecting the interests of the State which have been impaired by said emergency."

It is the opinion of this office that the Governor, with the consent of the Council, may authorize the use of the Emergency Fund for the continuation of the Constitutional Convention. In view of the fact that the Constitution of the State of New Hampshire provides for a Convention, it is considered that this is an essential function of state government. If the Convention is unable to complete its duties with the appropriation made by the General Court, the interests of the State are thereby impaired and an emergency exists. The Emergency Fund was created to provide for emergencies of this nature.

3. May the Constitutional Convention authorize a deficit to be presented to the next session of the Legislature?

In considering the third question proposed, reference is made to the Constitution, Part Second, Article 56, which provides that:

"No moneys shall be issued out of the treasury of this state . . . but by warrant under the hand of the governor for the time being, by and with the advice and consent of the council, for the necessary support and defense of this state, and for the necessary protection and preservation of the inhabitants thereof, agreeably to the acts and resolves of the general court."

This provision is self-effectuating, it would seem, and of itself would appear to prohibit the expenditure of funds in any case in excess of the amount appropriated. Funds paid out in excess of the sums prescribed by the Legislature cannot be said to be disbursed "agreeably to the acts and resolves of the general court." However, in 1903, the Legislature removed all possible doubt in this regard in the enactment of what is now RSA 9:19.

"9:19 Exceeding Appropriations. No state official, commissioner, trustee, or other person having control of public funds appropriated by the general court shall use any part of such funds for any other purpose than that for which they were appropriated, or expend any money or make any contract or bargain, or in any way bind the state in excess of the amount voted by the legislature."

In view of the specific statutory and constitutional prohibition, the Constitutional Convention may not exceed the appropriation made by the General Court, nor may they authorize a deficiency appropriation.

Very truly yours,

Arthur E. Bean, Jr.
Assistant Attorney General